

EXHIBIT 23

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1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF PUERTO RICO
4 PROMESA TITLE III
5 CASE NO: 17-BK-03283 (LTS)

6 IN RE: THE FINANCIAL OVERSIGHT AND
7 MANAGEMENT BOARD FOR PUERTO RICO
8 as representative of
9 THE COMMONWEALTH OF PUERTO RICO, et al.,
10 Debtor(s).

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF PUERTO RICO
14 PROMESA TITLE III
15 CASE NO: 17-BK-03566 (LTS)

16 IN RE: THE FINANCIAL OVERSIGHT AND
17 MANAGEMENT BOARD FOR PUERTO RICO
18 as representative of
19 THE EMPLOYEES RETIREMENT SYSTEM OF THE
20 GOVERNMENT OF THE COMMONWEALTH OF PUERTO
21 RICO,
22 Debtor(s).

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DATE: May 28, 2020

REPORTED BY: CHARLENE FRIEDMAN, CCR, RPR, CRR

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1 Enabling Act as part of the original
2 investment decision, which I think was your
3 question.

4 Q Okay. So to the best of your
5 knowledge, sitting here today -- let me
6 actually back up for a moment.

7 I think you had previously
8 testified in your prior deposition that you
9 had assisted with the analysis of ERS
10 bonds -- assisted with the decision whether
11 to purchase ERS bonds or Mason Capital.

12 Is that right?

13 A Correct.

14 Q And if I'm understanding you
15 correctly, it sounds like as part of that
16 analysis, you, yourself, did not look to the
17 English or Spanish version of the ERS
18 Enabling Act for purposes of that analysis?

19 A I -- I don't recall. I would have
20 read the -- just to be clear, what we're
21 talking about, the Enabling Act, that was, I
22 think, first was enacted in 1951 as opposed
23 to the bond resolution and the security
24 agreement, and those underlying documents, I
25 certainly would have read the bond

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1 resolution. I would have read the exhibits
2 attached to it.

3 I can't remember whether the
4 Enabling Act was part of the bond resolution.
5 I think it's a public security, and munic --
6 municipal public security would be -- I don't
7 have a recollection of looking at the
8 underlying statutory authorization for the
9 entity issuing bonds to exist.

10 I wouldn't imagine that I would do
11 that in most situations, buying municipal
12 debt, especially one that has been in
13 existence for 50 years, but I may have.

14 Q Do you know whether anybody who was
15 performing analysis on the ERS bonds at Mason
16 Capital looked at the ERS Enabling Act to
17 help determine whether to purchase ERS bonds?

18 A Prior to our first purchase of
19 bonds, I -- I -- same answer. Daniel may
20 have, but I doubt it.

21 I was -- those issues would have
22 been more on my -- in -- in my metric of
23 analysis.

24 Q So as you testified previously at
25 your prior deposition and earlier today, it's

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1 descent to any decision that I can think of,
2 but the reality is, like there's a couple of
3 large holders whose voice probably carries
4 more water.

5 But there's -- there's -- I don't
6 even think we have -- unlike some of the
7 situations, I'm not sure if -- we also had
8 engagement letters a long time ago. I don't
9 think there's by-laws.

10 You know, it's not a -- so I'm not
11 sure if I answered your question, but I said
12 a lot of things that are relevant to your
13 question.

14 Q When did Mason Capital become part
15 of this group?

16 MR. PAPEZ: Object, beyond --
17 beyond the 30(b)(6).

18 But to the extent you know
19 personally, you're free to testify.

20 A I don't recall.

21 It would be pretty easy to refresh
22 my recollection. There would be an
23 engagement letter somewhere.

24 I think -- I think it would have
25 been -- we worked with an original member.

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1 It could have been around -- done some of the
2 non-Title III litigation.

3 I can't -- I believe that we joined
4 after the -- one of the first stipulations
5 that was entered. I think it was -- I think
6 it was in Judge De Sosa's court.

7 I don't think I remember at that
8 time. I can't remember if -- if we joined
9 prior to or after the Title III case was
10 filed.

11 Q Now, you referred to some original
12 members.

13 Do you know who the original
14 members were?

15 A I don't know. I'd have to give you
16 what I think.

17 It could have been Annapolis and
18 Oaktree and King Street and -- I'm not sure.

19 Q Okay. Did Mason Capital -- and
20 this is a yes or no question, again, because
21 I -- I don't want you to tell me the advice
22 given.

23 When -- actually, let me phrase it
24 differently.

25 Again, I'm not asking for legal

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1 advice.

2 When did Mason Capital begin
3 receiving legal advice from Jones Day on the
4 subject of the ERS bonds?

5 A When we joined the group.

6 Q Okay. So, Mr. Engman, if I could
7 direct you to the PDF I had sent in advance
8 of the deposition that begins with PX-030,
9 please.

10 A Okay.

11 MR. DALSEN: This will be Exhibit 4
12 to today's deposition, the PDF titled PX-030.

13 (Above-mentioned document marked
14 for Identification.)

15 Q Mr. Engman, do you recognize
16 Exhibit 4?

17 A This is -- I just want to make sure
18 that I'm -- this is a chart?

19 Q That's right.

20 So this -- the PDF is PX-030. It's
21 a 50-page chart.

22 At the very top of -- in the middle
23 of each of the pages it says Mason Capital
24 Management Fund, LP, and there are multiple
25 columns, beginning with Bates number on

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1 Q And so just to be clear of that
2 for -- for Mason Capital, the earliest date
3 that Mason Capital was aware from any source,
4 whether it be itself or counsel, that the ERS
5 bonds may not have been issued with authority
6 or legally issued is November of 2017.

7 Is that correct?

8 MR. PAPEZ: Objection, asked and
9 answered.

10 A Well, I -- yeah, I was going to say
11 that the word "aware" seems to have -- have
12 meaning to it, and the context, in 2017,
13 especially that time period, I think it was
14 the beginning of October when both sides were
15 directed to file their summary judgment
16 motions on the lien perfection and extendable
17 lien issues.

18 And so early October both sides
19 filed thousands of pages, and then it was --
20 I don't know -- either October or early
21 November. Then also, I think it was in
22 November, the reply briefs were the -- the
23 scope adversary, for lack of a better word,
24 with its 40 or 50 issues that were involved,
25 name change, that were actually being

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1 litigated hot and heavy, the reply briefs
2 were filed in November.

3 The middle of November, the UCC
4 sought to gain that litigation, the judge
5 allowed the UCC to intervene in that
6 litigation and all of the significant issues
7 that were being litigated, all scheduled for
8 the hearing in early December.

9 And so, certainly, my focus was on
10 the thousands of pages and 20 or 30 issues
11 that were part of the summary judgment motion
12 that was being -- actually being litigated.
13 And so the fact that a non-party filed a
14 motion to dismiss that wasn't scheduled for
15 hearing anytime soon, that it wasn't ready to
16 be litigated, that was also -- that contact
17 was secondary to all of the issues that
18 needed to come before it in the lien scope
19 and was treated that way.

20 I -- I can't tell you that I was
21 aware of it.

22 Q Okay. So I guess, Mr. Engman,
23 that's a lengthy explanation.

24 Putting aside your own personal
25 focus or awareness for speaking for Mason

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1 Capital, what is the earliest date Mason
2 Capital was aware from any source that the
3 ERS bonds may not have been issued with
4 authority or legally issued?

5 A I won't give the whole lengthy
6 answer again, but I will tie it to me.

7 I would have been speaking for
8 Mason Capital. Mason Capital would have
9 become aware when I became aware.

10 And so, the same answer, only
11 substitute Mason Capital instead of me.

12 Q And just to be clear, what is the
13 earliest date that you would give them in
14 response to my question?

15 A Being aware?

16 Q Yes, sir.

17 A When -- when the UCC filed its
18 objection and when -- you know, give or take
19 a week or two when that litigation started
20 heating up, and, you know, it then became an
21 issue that was being -- you know, the issue
22 was joined.

23 Q Okay. I'm going to ask a slightly
24 different question. It may be the same
25 answer, but just for sake of completeness,

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1 when -- what is the earliest stage Mason
2 Capital was aware, from any source, of the
3 possibility of the ultra vires issue?

4 A Yeah, I'm going to give you the
5 same answer, substitute Mason Capital for me
6 personally.

7 In -- you know, in the spirit of
8 candor and completeness, the -- the November
9 pleading was in my files. It's just -- I
10 can't tell you that I read it.

11 And because of all that was going
12 on at the time and the -- and just the -- and
13 they just filed their -- their constitutional
14 challenge. We were in the middle of
15 mediation as well.

16 Just the -- the amount -- the
17 mounting of things that were -- of work to do
18 at that time, that it's not impossible that I
19 read a pleading that wasn't set for hearing
20 anytime in the near term, but it seems
21 unlikely to me.

22 Q And so it's -- it's your testimony
23 that you do not have a specific recollection
24 of reviewing a file -- filing from
25 November 2017 at the time it was filed.

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1 the fact that it had authority to do this.

2 So I -- I would have -- but at the
3 same time, this -- I've been doing this for a
4 long time. This is the first time an
5 entity's actual authority to -- to -- to --
6 to borrow has been an issue.

7 So in my whole career, it has been
8 a check the box, okay. The rep had
9 authority, the lawyers say they have
10 authority. Haven't gone further than that.

11 But it is something that you --
12 that I would have seen at the beginning. I
13 don't -- just looking -- like I said, at the
14 beginning of this deposition, I doubt -- it
15 may be that I would have gone from reading
16 the resolution and representation of
17 authority and the legal opinions to also look
18 at the underlying organic Enabling Act, but
19 I -- I doubt it, but I would have -- it's
20 possible that I would have looked at it.

21 Q And just -- just to be clear
22 about -- for the record, what is the -- the
23 earliest date in terms of a month or a year
24 that you would say Mason Capital was aware of
25 the debt authorizing language of the ERS

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1 Enabling Act from any source?

2 A And again, tied to the UCC
3 objection, I don't know if that was August of
4 2018 or -- sometime late summer I think is
5 when it was filed in 2018, but that's when
6 this issue become an issue and one that at
7 least tangentially had to think about.

8 Q Mr. Engman, what is the -- another
9 question in the same line here.

10 What is the earliest date Mason
11 Capital was aware from any source of the,
12 quote, illegally made, unquote, language in
13 statement of motives in Act 116-2011?

14 A I can't -- I can't -- I believe the
15 Kobre & Kim report said that, and I -- I
16 don't recall having an outside impact at the
17 time. If anything, I thought the Kobre & Kim
18 report, read it and thought it kind of
19 exonerated anything else, but I thought there
20 was a reference to it in that. I think that
21 predated the UCC objection. If the UCC
22 objection predated the Kobre & Kim, then the
23 UCC objection.

24 Q Okay. Just to be clear about that,
25 that last bit of testimony, you're saying

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1 And so this wasn't -- Puerto Rico wasn't a
2 typical Mason investment. It -- it is and
3 it's not.

4 The liquidity is -- it is and that
5 it's complex, and we like restructuring and
6 we like -- we like distress.

7 Among other, we also like
8 non-restructuring and merger and the like,
9 but because of the lack of liquidity, any
10 thought was that it might make sense to have
11 it in a sidecar fund rather than in the main
12 fund and so put this together -- put this --
13 I think it was one of the earlier, you know,
14 pieces of paper in that process of seeing if
15 it would make sense to -- to market to
16 investors a Puerto Rico centric fund.

17 Q Did Mason Capital ever create that
18 sidecar fund?

19 A We created the sidecar because
20 it -- it didn't -- it didn't -- Ken and Mike
21 and myself are -- I don't know if anybody
22 else.

23 Actually, I think there's one
24 other -- one other investor in it, a
25 relatively small amount, and he's also